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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 RICHARD HOM, an individual on behalf
of himself and JUSTIN KELLEY, an
17 individual on behalf of himself and on
behalf of all persons similarly situated,

18 Plaintiffs,

19 v.
20

21 DHL EXPRESS (USA), INC., an Ohio
corporation conducting business in the
State of California, and DOES 1 through
22 10,

23 Defendants.
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25
26
27
28

Case No. CV-08-3756 JL

**JOINT STIPULATION OF CLASS
SETTLEMENT AND CLASS
SETTLEMENT AGREEMENT AND
RELEASE**

Subject to its terms and conditions and the approval of the Court, this Joint Stipulation of Class Settlement and Class Settlement Agreement and Release (the "Settlement" or "Agreement") is made and entered into by and between Plaintiffs Richard Hom and Justin Kelley, individually and on behalf of the putative class (collectively "Plaintiffs"), and Defendant DHL Express (USA), Inc. ("DHL"). Plaintiffs and DHL are collectively referred to in this Settlement as the "Parties."

I. DEFINITIONS

1. In addition to terms defined elsewhere in the Settlement, as used in this Settlement the following terms have the meanings indicated below:

a. "Action" means the civil action filed on August 6, 2008 in the United States District Court for the Northern District of California entitled "*Richard Hom, an individual on behalf of himself and Justin Kelley, an individual, on behalf of himself, and on behalf of all persons similarly situated, Plaintiffs, v. DHL Express (USA), Inc., Defendant,*" Case No. CV 08-03756 JL.

b. "Claims Administrator" means Gilardi & Co. LLC, or an administrator mutually agreed to by the Parties that will perform the customary duties of a claims administrator including but not limited to, the duties enumerated in this Agreement.

c. "Claim Form" means the individualized Proof of Claim Form which a Class Member must duly complete and submit to the Claims Administrator in order to claim or challenge his or her individual settlement payment, as calculated under Paragraph 34 of this Agreement. Each individual's Claim Form shall include his or her estimated Gross Settlement Payment, the dates of his or her employment as a Field Services Supervisor, and the number of Compensable Weeks Employed. If the parties cannot agree on the content of this document, their dispute will be submitted to the Court for resolution.

d. "Class Counsel" shall refer to, collectively and individually, Stephen B. Morris of Morris and Associates, and Walter Haines of United Employees Law Group, P.C.

e. "Class Member" shall refer to an employee of DHL who falls within the definition of the Class.

f. "Class Notice" means the Notice which the Claims Administrator will

1 mail to each Class Member explaining the terms of the settlement contemplated by this Agreement,
 2 to be drafted in a format that is mutually acceptable to the parties. The Notice shall be accompanied
 3 by a separate Claim Form and an Exclusion Form. If the parties cannot agree on the content of the
 4 Class Notice, their dispute will be submitted to the Court for resolution.

5 g. "Class Representatives" shall refer to Plaintiffs Richard Hom and
 6 Justin Kelley.

7 h. "Class Representative Payment" means the Court-approved service
 8 payment to Plaintiffs Richard Hom and Justin Kelley for their services as Class Representatives.

9 i. "Compensable Weeks Employed" means the number of days of
 10 continuous service (including any unpaid leave) as a Field Services Supervisor during the
 11 appropriate Covered Period divided by seven (7).

12 j. "Counsel for DHL" or "Defense Counsel" means Littler Mendelson,
 13 A Professional Corporation.

14 k. "Covered Period" shall mean the period from August 6, 2004 through
 15 the date the Preliminary Approval Order is entered by the Court.

16 l. "DHL" means Defendant DHL Express (USA), Inc. and all of its
 17 officers, directors, agents, attorneys, parents, predecessors, successors, subsidiaries, and related and
 18 affiliated entities.

19 m. "Exclusion Form" means the form which a Class Member must submit
 20 to exclude himself or herself from the release of claims pursuant to this Settlement. If the parties
 21 cannot agree on the content of this document, their dispute will be submitted to the Court for
 22 resolution.

23 n. "Field Services Supervisor" means the DHL position identified by job
 24 codes "113015", "L10093", "L20093", "1A711", and "1971" during the Covered Period.

25 o. "Final Approval Hearing" means the hearing contemplated by the
 26 Parties, at which the Court will approve, in final, the settlement and make such other final rulings as
 27 are contemplated by this Settlement Agreement.

28 p. "Final Approval Order" means the Court's order granting final

1 approval of the Settlement and dismissing the Action with prejudice, which will constitute a
2 “judgment” within the meaning of Rule 58(a), Federal Rules of Civil Procedure.

3 q. “Final Effective Date” shall be the first date after all of the following
4 events or conditions have been met or have occurred:

5 (1) the Court has, by entry of a Preliminary Approval Order:

6 (a) Approved the certification of the Class for settlement
7 purposes;

8 (b) Preliminarily approved the settlement set forth in this
9 Settlement Agreement, and the method of providing the Court-approved Class Notice, Claim Form
10 and Exclusion Form to the certified class;

11 (2) The Court has entered a Final Approval Order approving this
12 settlement and the Court has entered the judgment as provided in Paragraph 1.r, below;

13 (3) No valid termination of the Settlement Agreement has occurred
14 pursuant to Paragraph 58, below;

15 (4) The time to appeal from the Final Approval Order has expired
16 and no notice of appeal has been filed; and

17 (5) In the event that an appeal is actually filed, the latest of the
18 following, if applicable, has occurred:

19 (a) Any appeal from the Final Approval Order has been
20 finally dismissed;

21 (b) The Final Approval Order has been affirmed on appeal
22 in a form substantially identical to the form of the Final Approval Order entered by the Court;

23 (c) The time to petition for review with respect to any
24 appellate decision affirming the Final Approval Order has expired; or

25 (d) If a petition for review of an appellate decision is filed,
26 the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Final
27 Approval Order in a form substantially identical to the form of the Final Approval Order entered by
28 the Court.

1 r. “Final Judgment” means the judgment entered by the Court in
2 conjunction with the Final Approval Order dismissing the Action with prejudice. The Parties shall
3 submit an order of Final Judgment setting forth the terms of this Settlement Agreement, by
4 incorporation or otherwise, for execution and entry by the Court at the time of the Final Approval
5 Hearing or at such other time as the Court deems appropriate.

6 s. “Gross Settlement Payment” means the gross amount of the Maximum
7 Settlement Distribution Settlement Amount each Participating Class Member will be paid.

8 t. “Maximum Gross Settlement Amount” shall mean the maximum
9 amount that DHL shall pay out under this Settlement if all Class Members file valid and timely
10 claims, which is Seven Hundred Forty Thousand Dollars (\$740,000). That sum is and shall be
11 inclusive of the following: (a) the Maximum Settlement Distribution Amount payable to Class
12 Members; (b) the Class Representative Payments to the two Class Representatives in the amount of
13 up to Eight Thousand Five Hundred Dollars (\$8,500) each; (c) all of Class Counsel’s attorneys’ fees
14 in an amount of up to One Hundred Eighty Five Thousand Dollars (\$185,000), costs and expenses
15 associated with the Action in an amount of up to Ten Thousand Dollars (\$10,000), incurred or to be
16 incurred in the Settlement of the Action, and any appeals; (d) the PAGA Payment of Twenty
17 Thousand Dollars (\$20,000); (e) the fees and expenses of the Claims Administrator not to exceed
18 Twenty Thousand Dollars (\$20,000); (f) the employee portion of all applicable tax withholdings
19 including, but not limited to, FICA, FUTA and other employment related taxes and withholding of
20 federal, state and local income taxes; and (g) the amount of up to Twenty-Eight Thousand Dollars
21 (\$28,000) as and for the employer’s share of FICA, FUTA, and all other state and federal payroll
22 taxes and deductions for the wage portion of the Settlement Payments (the “Employer Payroll
23 Taxes.”).

24 u. “Maximum Settlement Distribution Amount” means the amount which
25 shall be available to pay timely, valid claims of Participating Class Members, and the employee
26 payroll taxes due on such payments. The Maximum Settlement Distribution Amount is Four
27 Hundred Sixty Thousand Dollars (\$460,000).

28 v. “PAGA Payment” means the amount of Twenty Thousand Dollars

1 (\$20,000) which shall be remitted to the California Labor and Workforce Development Agency for
 2 the resolution of the Class Members' claims under the California Private Attorney General Act
 3 ("PAGA"), California Labor Code Section 2698, *et. seq.*

4 w. "Participating Class Members" means those members of the Class who
 5 file timely and valid Claim Forms.

6 x. "Preliminary Approval Order" means the order of the Court granting
 7 preliminary approval of this Settlement Agreement on the terms provided herein or as the same may
 8 be modified by subsequent mutual agreement of the Parties.

9 **II. BACKGROUND AND REASONS FOR SETTLEMENT**

10 2. On August 6, 2008, Plaintiffs Richard Hom and Justin Kelley filed a
 11 complaint in the Northern District of California against DHL on behalf of themselves and all other
 12 Field Service Supervisors who worked at DHL nationwide. In their complaint, Plaintiffs alleged that
 13 DHL incorrectly classified the Field Service Supervisor position as exempt from payment of
 14 overtime under California law and federal law. Due to this alleged misclassification, Plaintiffs
 15 alleged they were entitled to overtime pay under the Fair Labor Standards Act, and California Labor
 16 Code sections 510, 515, 1194, and 1198; compensation for missed meal and rest periods pursuant to
 17 California Labor Code sections 226.7 and 512; waiting time penalties according to Labor Code
 18 section 201-203; penalties for inaccurate itemized wage statements pursuant to Labor Code section
 19 226(a); and restitution and injunctive relief in accord with California Business and Professions Code
 20 section 17200; as well as interest and attorneys fees.

21 3. On September 8, 2008, Defendant DHL answered the complaint in the Action.
 22 DHL denied Plaintiffs' material allegations; maintained that the Court should not certify the class
 23 action proposed by Plaintiffs, that Plaintiffs and the proposed class was properly paid all wages
 24 under California wage-and-hour law, and raised other defenses.

25 4. After engaging in informal discovery and preliminary settlement negotiations,
 26 Plaintiffs agreed to dismiss the FLSA claim and allegations pertaining to a nationwide class. The
 27 Parties submitted a Joint Stipulation and on May 15, 2009, the Court signed an Order Dismissing
 28 the First Cause of Action.

1 5. After completing several key depositions and engaging in initial written
2 discovery, the Parties agreed to engage in an early mediation. In anticipation of the mediation,
3 Defendant provided Plaintiffs with information regarding the number of putative Class Members,
4 their average rate of pay, and the average number of weeks each putative Class Member worked
5 within the limitations period.

6 6. On August 6, 2009, the Parties attended a mediation session presided over by
7 Michael Loeb of JAMS, a mediator with significant experience in wage and hour class actions. Each
8 Party was represented by their respective counsel during the good-faith negotiations facilitated by
9 Mr. Loeb. While the Parties were unable to reach agreement at the mediation, the Parties continued
10 to negotiate for several weeks following the mediation, assisted by Mr. Loeb. At the conclusion of
11 the additional negotiations, on September 4, 2009, the Parties signed a Memorandum of
12 Understanding outlining the key elements of the agreed upon settlement.

13 7. Class Counsel represent that they have conducted a thorough investigation
14 into the facts of this case, and have diligently pursued an investigation of the Class Members' claims
15 against DHL, including (1) interviewing Class Members and analyzing the results of Class Member
16 interviews; (2) reviewing relevant documents; (3) researching the applicable law and the potential
17 defenses; and (4) taking the depositions of several DHL managers. Based on their own independent
18 investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable
19 and adequate and is in the best interest of the Class in light of all known facts and circumstances,
20 including the risk of significant delay, defenses asserted by DHL, and potential appellate issues.
21 DHL agrees that the Settlement is fair, reasonable and adequate.

22 8. It is the mutual desire of the Parties to fully, finally, and forever settle,
23 compromise, and discharge all disputes and claims raised in or related in any way to the Action.
24 Thus, the entry of the Final Approval Order in this Action shall dismiss with prejudice all claims
25 which were or which could have been alleged in Plaintiffs' Complaint. The Parties agree to
26 cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of
27 this Settlement, to effectuate its terms, and to dismiss this Action with prejudice.

28 **III. NO ADMISSION**

9. Nothing contained in this Joint Stipulation and the Settlement contemplated in the Joint Stipulation shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of DHL, and DHL denies liability therefor. While DHL believes that this Action meets the prerequisites for certification of a settlement class, the fact that DHL seeks approval of this Settlement in the form of a class action shall not be construed as an admission that the underlying action was properly brought as a class action, a representative action under California Business and Professions Code section 17200, or a collective action under the FLSA for purposes other than settlement. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. Settlement of the Action, the negotiation and execution of this Joint Stipulation, and all acts performed or documents executed pursuant to or in furtherance of this Joint Stipulation or the Settlement: (1) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of DHL; (2) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of DHL in any civil, criminal, administrative or arbitral proceeding in any court, administrative agency or other tribunal; and (3) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for class certification or administration other than for purposes of administering this Joint Stipulation. This Joint Stipulation is a settlement document and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of the Joint Stipulation.

IV. CERTIFICATION OF A RULE 23 CLASS

10. For Settlement purposes only, the Parties stipulate to conditional certification of the Settlement Class ("Class"), an opt-out class under Rule 23, Federal Rules of Civil Procedure, that is defined as follows:

All current or former Field Services Supervisors employed by Defendant DHL in the State of California between August 6, 2004 and the date of the preliminary approval of the settlement and who have not, as of the date of the preliminary approval of the settlement, executed a general release of known and unknown employment claims against DHL, unless such release specifically permits participation in this Settlement by reference to this lawsuit.

11. The Parties stipulate that Plaintiffs Richard Hom and Justin Kelley shall be appointed as Class Representatives for the Settlement Class.

12. The Parties stipulate that Stephen B. Morris of Morris and Associates, and Walter Haines of United Employees Law Group, P.C., shall be appointed Class Counsel for the Settlement Class.

13. The stipulations to certify the Settlement Class are completely contingent upon final approval of this Agreement by the Court and are made for settlement purposes only. If the Settlement is not approved by the Court, is overturned on appeal, or does not become final for any other reason, the Parties agree that the certification of the Settlement Class is void *ab initio* and that, if necessary, they shall stipulate to decertification of the Settlement Class without prejudice to the propriety of class certification being adjudicated on the merits.

V. TERMS OF THE SETTLEMENT

A. Maximum Gross Settlement Amount and Tax Allocation

14. The Maximum Gross Settlement Amount under this Settlement, if all Class Members file valid and timely claims, is Seven Hundred Forty Thousand Dollars (\$740,000.) Under no circumstances will Defendant be required to pay more than Seven Hundred Forty Thousand Dollars (\$740,000) total, for any reason whatsoever, under this Settlement Agreement.

15. This Settlement does not establish a fund for the payment of claims. The Maximum Gross Settlement Amount shall remain in the possession, custody, and control of DHL until the settlement amounts are distributed as set forth herein. The Maximum Gross Settlement Amount shall not be segregated but shall remain in DHL's general funds until distributed or shall be provided to the Claims Administrator for distribution sufficiently in advance for the Claims Administrator to meet its obligations under the Settlement Agreement. In the event that this Settlement Agreement is canceled, rescinded, terminated, voided, or nullified, however that may occur, or the settlement of the Action is barred by operation of law, is invalidated, is not approved or otherwise is ordered not to be carried out by the Court or any court of competent jurisdiction, DHL will cease to have any obligation to pay or provide any portion of the Maximum Gross Settlement Amount to anyone under the terms of this Settlement Agreement and all previous disbursements

1 from the Maximum Gross Settlement Amount will immediately be paid back to DHL by the person
2 or entity who received such disbursements.

3 16. The payment of the Maximum Gross Settlement Amount shall be
4 accomplished by using a "claims made" procedure as set forth herein. The Parties will apply the
5 formula set forth in Section V.E below for allocating the portion of the Maximum Gross Settlement
6 Amount that is designated for payments to Participating Class Members (those who file a timely and
7 valid Claim Form) in a manner that results in the complete distribution of that portion, assuming that
8 all members of the Settlement Class participate in the distribution. If fewer than all Class Members
9 participate in the distribution, such unclaimed amounts are, shall continue to be and shall remain the
10 exclusive property of DHL and shall be retained by, DHL, subject to the minimum payout of 60% of
11 the Maximum Settlement Distribution Amount, as set forth in Paragraph 34 below.

12 17. The Gross Settlement Payment to Participating Class Members shall be
13 allocated as follows: Fifty Two Point One Seven Percent (52.17%) of such consideration shall be
14 allocated to the payment of taxable wages and wage-related payments and Forty Seven Point Eight
15 Three Percent (47.83%) of such consideration shall be allocated to the payment of non-taxable
16 interest, penalties, liquidated damages, and related aspects of the settlement.

17 18. For all Participating Class Members, the Claims Administrator shall make
18 appropriate tax reporting and withholdings in accordance with applicable law and regulations and
19 will issue required state and federal reporting documents (such as IRS Forms W-2s and 1099s).

20 **B. Attorneys' Fees and Costs**

21 19. The Action alleges a potential claim for attorneys' fees and costs pursuant to,
22 *inter alia*, the California Labor Code. The Parties agree that any and all such claims for attorneys'
23 fees and costs have been settled in this Joint Stipulation subject only to approval by the Court.

24 20. DHL understands that Class Counsel will apply to the Court for an award of
25 attorneys' fees and costs, which will be scheduled for determination at the final fairness and
26 approval hearing described in Paragraph 69 below. Class Counsel will apply for, and DHL will not
27 oppose, an award of attorneys' fees in an amount up to, but not to exceed, twenty-five (25) percent
28 of the Maximum Gross Settlement Amount (which is equal to One Hundred Eighty-Five Thousand

1 Dollars (\$185,000), and costs in the maximum amount of Ten Thousand Dollars (\$10,000), all of
2 which shall be paid exclusively from the Maximum Gross Settlement Amount, and will compensate
3 Class Counsel for all of the work already performed in the Action and all work remaining to be
4 performed in documenting the Settlement, securing Court approval of the Settlement, administering
5 the Settlement, ensuring that the Settlement is fairly administered and implemented, obtaining
6 dismissal of the Action with prejudice, and defending against any appeals, as well as all associated
7 expenses. Neither Richard Hom, Justin Kelley, Class Counsel, nor any other Class Member, shall
8 seek payment of attorneys' fees or reimbursement of costs or expenses from DHL except as
9 expressly set forth in this Joint Stipulation.

10 21. The substance of Class Counsel's application for attorneys' fees and costs is
11 not a material part of this Joint Stipulation, and is to be considered separately from the consideration
12 of the fairness, reasonableness, adequacy, and good faith of the settlement of the Action. However,
13 all claims for attorneys' fees and costs or expenses that the Settlement Class may possess against
14 DHL have been compromised and resolved in this Joint Stipulation. Any proceedings related to
15 Class Counsel's application for attorneys' fees and costs shall not terminate or cancel this Joint
16 Stipulation. If Class Counsel appeals the Court's ruling on its fee and cost application, the ruling of
17 the appellate court (regardless of its substance) shall not constitute a material alteration of a term of
18 this Joint Stipulation.

19 22. No later than five (5) calendar days prior to the Final Effective Date, Class
20 Counsel shall deliver to counsel for DHL (1) written instructions signed by all Class Counsel that
21 describes the manner and mode of payment of such attorneys' fees and costs (and, in the absence of
22 such instructions, such attorneys' fees and costs shall be sent by U.S. mail as set forth below), and
23 (2) fully-executed Form W-9s with respect to all persons or entities to whom some or all of the
24 attorneys' fees and costs shall be paid.

25 23. No later than five (5) calendar days after the later of (a) the date on which
26 counsel for DHL receives the written instructions referenced in the preceding paragraph; or (b) the
27 Final Effective Date, DHL shall issue a payment to Class Counsel for the amount of attorneys' fees
28 and costs approved by the Court and in accordance with the instructions provided by Class Counsel.

24. DHL will issue to Class Counsel IRS Form 1099s for the amounts paid for attorneys' fees and costs under this Settlement.

C. Payment to Claims Administrator

25. On or before the date of the Final Approval Hearing, the Claims Administrator shall deliver to counsel for DHL a fully-executed Form W-9.

26. No later than twenty (20) calendar days after the Final Effective Date, DHL shall mail the Court-approved payment for the Claims Administrator's fees and costs to the Claims Administrator in an amount not to exceed Twenty Thousand Dollars (\$20,000).

27. DHL will issue to the Claims Administrator an IRS Form 1099 for the sum paid to it under this Settlement.

D. Enhancement Payment to Class Representative

28. DHL understands that Plaintiffs Richard Hom and Justin Kelley and Class Counsel will apply to the Court for an award of Class Representative Payments, which will be scheduled for determination at the final fairness and approval hearing. Plaintiff Richard Hom and Class Counsel will apply for a Class Representative Payment in an amount up to, but not to exceed, Eight Thousand Five Hundred Dollars (\$8,500), which shall be paid exclusively from the Maximum Gross Settlement Amount, and will compensate Plaintiff Richard Hom for his services as Class Representative. Conditioned upon Mr. Hom's execution of a general release in favor of DHL, DHL will not oppose Plaintiff Richard Hom's application for a Class Representative Payment up to the stated amount. Plaintiff Justin Kelley and Class Counsel will apply for a Class Representative Payment in an amount up to, but not to exceed, Eight Thousand Five Hundred Dollars (\$8,500), which shall be paid exclusively from the Maximum Gross Settlement Amount, and will compensate Plaintiff Justin Kelley for his services as Class Representative. Conditioned upon Mr. Kelley's execution of a general release in favor of DHL, DHL will not oppose Plaintiff Justin Kelley's application for a Class Representative Payment up to the stated amount.

29. Any Class Representative Payments awarded by the Court shall be in addition to the payment, if any, Plaintiff Richard Hom and Plaintiff Justin Kelley may otherwise receive as a Participating Class Member.

1 30. No later than twenty (20) calendar days after the day the Final Effective Date,
2 DHL shall issue a Class Representative Payments to Plaintiff Richard Hom and Plaintiff Justin
3 Kelley in the amount approved by the Court.

4 31. DHL will issue IRS Form 1099s to Mr. Hom and Mr. Kelley for the amount
5 of the Class Representative Payment.

6 **E. Distribution to Participating Class Members**

7 32. Only those Participating Class Members (those who timely submit valid
8 Claim Forms) are eligible to receive a settlement payment. To be timely, a Claim Form must be
9 postmarked or actually received by the Claims Administrator by the date indicated on the Claim
10 Form (which shall be the date set forth in Paragraph 44 below). To be valid, the Claim Forms must
11 be completed in full including, but not limited to, the portion requesting the last four digits of the
12 Class Member's Social Security Number, and signed under penalty of perjury without any deletion
13 or amendment of any portion of the Claim Form including, but not limited to, the release language.

14 33. The Maximum Settlement Distribution Amount to Participating Class
15 Members shall be Four Hundred Sixty Thousand Dollars (\$460,000). The Maximum Settlement
16 Distribution Amount shall be available to pay timely, valid claims of Participating Class Members
17 and the employee's share of payroll taxes due on such payments.

18 34. The Gross Settlement Payment to Participating Class Members will be
19 calculated and paid according to the number of Compensable Weeks employed by Class Members
20 during the applicable Covered Period as follows.

21 a. The total number of Compensable Weeks Employed by all of the Class
22 Members shall constitute the "Total Compensable Weeks".

23 b. The "Dollars Per Week" will be calculated by dividing the Total
24 Compensable Weeks into the Maximum Settlement Distribution Amount.

25 c. The portion of the Maximum Settlement Distribution Amount
26 allocated to each Participating Class Member who timely submits a valid Claim Form and will be
27 calculated by multiplying the Dollars Per Week by the total Compensable Weeks Employed by that
28 Participating Class Member. The result shall be the Gross Settlement Payment to that Participating

1 Class Member. The Gross Settlement Payment to an individual Participating Class Member shall be
2 allocated between taxable and non-taxable consideration as provided in Paragraph 17. From the
3 portion of this Gross Settlement Payment which is taxable as wages shall be withheld the
4 employee's share of payroll taxes and all other applicable deductions or withholding required by law
5 or expressly authorized by the Participating Class Member. The amount remaining for payment to
6 an individual Participating Class Member shall be the Net Wage Settlement Payment. The portion
7 of the Gross Settlement Payment to an individual Participating Class Member which is allocated to
8 interest, penalties and other amounts not subject to taxes shall be the Non-Taxable Settlement
9 Payment.

10 d. The Participating Class Members shall be paid their respective Net
11 Wage Settlement Payments and Non-Taxable Settlement Payments as provided in this Agreement.

12 e. If less than sixty (60) percent of the Maximum Settlement Distribution
13 Amount is claimed in Gross Settlement Payments to Participating Class Members (after all duly
14 completed and timely Claim Forms have been considered and all challenges have been resolved), the
15 Parties will instruct the Claims Administrator to increase the amount to be distributed to
16 Participating Class Members so that no less than sixty (60) percent of the Maximum Settlement
17 Distribution Amount is distributed to Participating Class Members as Gross Settlement Payments.
18 The increase in the amount distributed shall be made on a pro rata basis proportionate to the amounts
19 claimed by each Participating Class Member. If sixty (60) percent or greater of the Maximum
20 Settlement Distribution Amount has been claimed by Participating Class Members, no increase in
21 the amount to be distributed shall occur. DHL shall not be obligated to pay any other amount to
22 Class Members. This Paragraph is a material term in the Agreement and DHL has the right to void
23 this Settlement, in its entirety within ten (10) days of Preliminary Approval, if this term is not
24 approved by the Court as submitted.

VI. APPOINTMENT AND DUTIES OF CLAIMS ADMINISTRATOR

35. The Claims Administrator shall perform the following duties in connection with administration of the Settlement: (1) using the data provided by DHL to prepare the Claim Forms for each Class Member, as described in section VII.B of this Settlement; (2) obtaining updated forwarding addresses for Class Members using appropriate methods, as described in Paragraph 39 of this Settlement; (3) mailing the Notice, Claim and Exclusion Forms to Class Members; (4) tracking non-delivered Notice, Claim and Exclusion Forms and taking reasonable steps to re-send them to Class Members' current addresses; (5) tracking and timely reporting to Class Counsel and Counsel for DHL returned Claim Forms and submitted requests not to participate in Settlement; (6) calculating the amounts due to each Participating Class Member pursuant to the Settlement; (7) calculating the applicable employee and employer payroll taxes and deductions; (8) resolving disputes (if any) by Class Members regarding the number of Compensable Weeks Employed or other matters, after timely notice to and consultation with Class Counsel and counsel for DHL; and (9) contacting all Participating Class Members who have not cashed their Settlement Checks to remind them to do so before the six-month deadline for doing so expires.

36. All disputes relating to the Claims Administrator's performance of its duties will be referred to the Court, if necessary, which will have continuing jurisdiction over this Settlement until all payments and obligations contemplated by this Settlement have been fully carried out.

VII. NOTICE TO THE CLASS OF THE SETTLEMENT AND THE CLAIM PROCESS

A. Mailing the Class Notice and Claim and Exclusion Forms to the Class Members

37. Within fifteen (15) calendar days after the Court enters its Preliminary Approval Order, DHL will provide to the Claims Administrator a database that lists, for each Class Member, the individual's name, Social Security Number, last known address and telephone number; and dates of employment as a Field Services Supervisor. This database will be drawn from DHL's payroll and other business records and will be in a format acceptable to the Claims Administrator and DHL. DHL will consult with the Claims Administrator prior to the date for providing this information to ensure that the format will be acceptable to the Claims Administrator. DHL will also

1 provide Class Counsel with a list of each Class Member's name; and the dates of employment as a
2 Field Services Supervisor. The data provided to the Claims Administrator and Class Counsel will
3 remain confidential and will not be disclosed to anyone, except as required to applicable tax
4 authorities, pursuant to DHL's express written consent, or by order of the Court.

5 38. Within twenty (20) calendar days after DHL provides to the Claims
6 Administrator the database pursuant to Paragraph 37, above, the Claims Administrator will mail, by
7 first-class mail, the Class Notice, Claim Form and Exclusion Form to all Class Members at their last
8 known address, unless modified by any updated address information that the Claims Administrator
9 obtains in the course of administration of the Settlement.

10 39. The Claims Administrator will use standard devices, including the National
11 Change of Address database or equivalent, to obtain forwarding addresses prior to mailing and will
12 use appropriate skip tracing to take appropriate steps to maximize the probability that the Notice
13 Materials will be received by all Class Members. Under no circumstances will the Claims Period be
14 extended by virtue of the Claims Administrator's efforts to locate a Class Member whose Notice has
15 been returned.

16 40. The Claims Administrator shall provide regular reports to Class Counsel and
17 DHL's counsel as to the mailings of Class Notices, Claim Forms, and Exclusion Forms, and the
18 receipt of Claim Forms, Exclusion Forms and Objections prior to the close of the period in which
19 claims can be made. The Claims Administrator shall also provide the reports described in
20 Paragraphs 55 - 57 below.

21 **B. Claim Form**

22 41. The Claim Form mailed to the Class Members will show for the recipient
23 Class Member his or her estimated Gross Settlement Payment, the dates of his or her employment as
24 a Field Services Supervisor, and number of Compensable Weeks Employed. The estimated Gross
25 Settlement Payment shall be calculated under the assumption that (a) the Court finally approves the
26 Settlement in accordance with this Agreement; and (b) sixty percent (60%) or more of the Maximum
27 Settlement Distribution Amount is claimed by Participating Class Members.

28 42. Class Members will have the opportunity to challenge the information pre-

1 printed on their individualized Claim Forms, including the job title, dates of employment as a Field
2 Services Supervisor, and number of Compensable Weeks Employed, by submitting a written
3 challenge along with their signed Claim Form and supporting documentation to the Claims
4 Administrator within the time period provided for submitting the Claim Form. Any challenges to the
5 information pre-printed on the Claim Form must be supported by documentary evidence; the Claims
6 Administrator will reject any challenge not supported by such evidence.

7 43. Timely challenges submitted with documentary evidence will be resolved
8 without hearing by the Claims Administrator after consultation with Class Counsel and Counsel for
9 DHL. DHL's records will be presumed correct, but the Claims Administrator will evaluate the
10 evidence submitted by the Class Member and will make a final determination based on its evaluation
11 of all the evidence presented.

12 44. In order for a Class Member to be eligible to participate in this Settlement and
13 to receive any settlement payments, the Class Member must submit a valid, fully-executed Claim
14 Form (along with all required documentation) to the Claims Administrator that is postmarked by, or
15 physically delivered to the Claims Administrator, no later than sixty (60) calendar days after the
16 initial date of mailing of the Notices and Claim Forms. No Claim Forms will be accepted if
17 postmarked or physically received by the Claims Administrator after the deadline indicated. All
18 original Claim Forms shall be sent directly to the Claims Administrator at the address indicated on
19 the Claim Form.

20 45. In the event that a Claim Form is submitted timely but is deficient in one or
21 more respects, the Claims Administrator will return the Claim Form to the Class Member within five
22 (5) business days of receipt with a notice explaining the deficiencies and stating that the Class
23 Member will have ten (10) business days from the date of the deficiency notice to correct the
24 deficiency and resubmit the Claim Form. The envelope containing the resubmitted Claim Form
25 must be postmarked within ten (10) business days of the date of the deficiency notice to be
26 considered timely, absent a showing of good cause.

27 46. Information regarding which individual Class Members submit Claim Forms
28 and which Class Members do not submit Claim Forms will be shared within DHL on a need-to-

1 know basis, to the extent feasible and consistent with the Settlement. Specifically, the dissemination
2 of such information will be limited, to the extent feasible, to DHL's outside counsel, DHL's in-house
3 counsel, and DHL's Human Resources Department. DHL will have no policy of disseminating such
4 information to managers within Class Members' chains of command. These limitations will not
5 prevent DHL from sharing any information with any DHL employee if the sharing of such
6 information is necessary to accomplish legitimate business goals or the fulfillment of the aims of this
7 Settlement.

8 **C. Objections to Settlement**

9 47. The Class Members will have forty-five (45) calendar days after the date on
10 which the Claims Administrator mails the Notice Materials to object to the Settlement by serving on
11 the Claims Administrator, Class Counsel, and Counsel for DHL, and filing with the Court, by the
12 forty-five (45) day deadline, a written objection to the Settlement.

13 48. Any Class Member who intends to submit an objection also must timely
14 submit a Claim Form in accordance with the provisions set forth in Section VII.B, above. Any Class
15 Member who has elected not to participate in the Settlement (pursuant to the procedure set forth in
16 Section VII.D, below) may not submit an objection to the Settlement.

17 49. A Class Member who does not file and serve a written objection in the manner
18 and by the deadline specified above will be deemed to have waived any objection and will be
19 foreclosed from making any objections to the Settlement (whether by appeal or otherwise).

20 50. Counsel for the Parties shall file any response to any objections filed by
21 objecting Class Members at least seven (7) calendar days before the Final Approval Hearing.
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D. Election Not to Participate in the Class Settlement

51. In order for a Class Member to validly and effectively request exclusion from, and opt out of, this Settlement, the Class Member must submit to the Claims Administrator an Exclusion Form. In order to be valid, the Exclusion Form must be postmarked by, or physically delivered to the Claims Administrator no later than sixty (60) calendar days after the date of mailing of the Notices, Claim Forms and Exclusion Forms. No request not to participate will be accepted if postmarked or physically received by the Claims Administrator after the deadline indicated.

52. Any Class Member who does not properly and timely submit an Exclusion Form will automatically be bound by all terms and conditions of the Settlement, including its release of claims, if the Settlement is approved by the Court, and be bound by the Final Approval Order, regardless of whether he or she has objected to the Settlement or submitted a completed Claim Form.

53. A Class Member who properly and timely submits an Exclusion Form will not be bound by the Settlement, and will remain free to contest any claim brought by the Plaintiffs that would have been barred by the Settlement, and nothing in this Settlement will constitute or be construed as a waiver of any defense DHL has or could assert against such a claim.

54. Plaintiffs Richard Hom and Justin Kelley may not opt-out of the Settlement Class or file an objection to the Settlement.

E. Reports and Declaration by Claims Administrator

55. By not later than ten (10) calendar days after expiration of the 60-day deadline for submission of written requests not to participate in the Class Settlement, the Claims Administrator will submit to Class Counsel and Counsel for DHL a report setting forth the people (identified by name and the last four digits of their Social Security Number) who as of that date have submitted (a) valid Exclusion Forms, and (b) invalid requests not to participate in the Settlement (the "Opt-Out Report"). In the event that the Claims Administrator subsequently receives a request not to participate in the Settlement, it will promptly distribute an updated Opt-Out Report.

56. By not later than ten (10) days after expiration of the 60-day deadline for submission of Claim Forms, the Claims Administrator will submit to Class Counsel and Counsel for DHL a report setting forth the people (identified by name and the last four digits of their Social

1 Security Number) who as of that date have submitted (a) valid Claim Forms and (b) invalid Claim
2 Forms, along with the Gross Settlement Amount for each individual on the list, as calculated
3 pursuant to Paragraph 34, above.

4 57. By not later than the date when Plaintiffs files their motion for final approval
5 of the Settlement, the Claims Administrator will prepare and submit for filing in support of the
6 motion a declaration attesting to its mailing of the Class Notice, Claim Form and Exclusion Form,
7 its receipt of valid Claim Forms (indicated by number of Participating Class Members only), its
8 receipt of Exclusion Forms, and its inability to deliver the Class Notice, Claim Form and Exclusion
9 Form to potential Class Members due to invalid addresses. Prior to the Final Approval Hearing, the
10 Claims Administrator will prepare and submit for filing in support of the motion a supplemental
11 declaration as applicable.

12 **VIII. RIGHT TO RESCIND**

13 58. In the event that seven percent (7%) or more of the Class Members submit
14 Exclusion Forms or other valid requests not to participate in the Settlement, DHL will have the
15 exclusive right in its sole discretion to rescind the Settlement, and all actions taken in its furtherance
16 will be null and void. DHL must exercise this right within fourteen (14) days after the later of: 1)
17 the deadline for submitting requests not to participate in the Settlement; and 2) the date on which the
18 Claims Administrator first informs DHL that at least seven percent (7%) of the potential Class
19 Members have submitted Exclusion Forms or other valid requests not to participate in the
20 Settlement.

21 **IX. DISTRIBUTION OF THE SETTLEMENT PAYMENTS**

22 59. No later than seven (7) calendar days after the Final Effective Date, the
23 Claims Administrator will provide counsel for DHL and Class Counsel with a list of those members
24 of the Class (identified by name and the last four digits of his or her Social Security Number) who
25 filed valid Claim Forms and the Gross Settlement Payment for each individual on that list. The sum
26 of the Gross Settlement Amounts due to the individuals on the list shall constitute the "Class
27 Settlement Payment". The Class Administrator shall also inform counsel for DHL of the amount of
28 employer payroll taxes and other deductions due to be transmitted by DHL to the Claims

1 Administrator based on the wage portion of the Gross Settlement Payments for all of the individuals
2 on that list. The sum of the employer payroll taxes and other deductions shall constitute the
3 "Employer Payroll Taxes."

4 60. DHL will cause the Class Settlement Payment and the Employer Payroll
5 Taxes to be wired to the Claims Administrator no later than fifteen (15) calendar days after the
6 Claims Administrator provides counsel for DHL with the list described in the preceding paragraph
7 along with wire instructions.

8 61. Within thirty (30) calendar days after the Final Effective Date, the Claims
9 Administrator will distribute to every Participating Class Member his or her Net Wage Settlement
10 Payment and Non-Taxable Settlement Payment.

11 62. The Claims Administrator will timely remit the employer's and employee's
12 portion of the payroll and other taxes associated with the settlement payments to the proper
13 authorities, as required by law. In addition, the Claims Administrator will timely issue a Form W-2
14 to each Participating Class Member that reflects the wage portion of the settlement payment and a
15 Form 1099 to each Participating Class Member that reflects the non-wage portion of the settlement
16 payment.

17 63. By not later than ninety (90) days after the checks are mailed to the
18 Participating Class Members the Claims Administrator will contact either by telephone or letter each
19 Participating Class Member who has not cashed his or her settlement check and remind him or her to
20 do so before the six-month deadline. The Claims Administrator will inform those individuals that if
21 they fail to cash their settlement checks by the six-month deadline, they will not receive any money
22 under the Settlement, and their settlement proceeds represented by the check will be returned to
23 DHL. By no later than one hundred and fifty (150) days after the settlement checks are mailed to
24 every Participating Class Member, the Claims Administrator will again contact those individuals
25 who have not cashed their checks with the same reminder and information.

26 64. If any Participating Class Member does not cash his or her settlement check(s)
27 within six (6) months after issuance, ten (10) business days after the check-cashing deadline the
28 Claims Administrator shall void the check and return the funds it was holding for payment of the

1 check to DHL.

2 **X. RELEASE OF CLAIMS**

3 **A. Released Claims by Class Members Who Do Not Opt Out**

4 65. As of the date the Final Approval Order is entered by the Court and except as
5 to such rights or claims as may be created by this Settlement, to the maximum extent allowed by
6 law, each Class Member who has not timely and effectively opted out, will be deemed to have
7 released claims as follows, which will be incorporated into the Notice and Claim Form:

8 “In consideration of this settlement, I hereby release and discharge DHL and its
9 former and current parents, subsidiaries, and affiliated corporations, all of their officers, directors,
10 employees, partners, shareholders, and agents, and any other insurers, successors, assigns, and legal
11 representatives (the “Released Parties”), from any and all claims, charges, complaints, liens,
12 demands, causes of action, obligations, damages and liabilities, whether suspected or unsuspected,
13 known claims or Unknown Claims, that I had, now have, or may hereafter claim to have against the
14 Released Parties and that arise from or relate in any way to arising from my employment as a Field
15 Services Supervisor during the Covered Period based upon the facts alleged in or encompassed by
16 the Complaint, including but not limited to all claims related to misclassification of exempt status,
17 overtime, missed meal periods, missed rest breaks, failure to provide timely accurate wage
18 statements and maintain required payroll records, waiting time penalties, interest and other penalties,
19 damages, and injunctive relief under federal and state law, including but not limited to the California
20 Labor Code, the Wage Orders of the California Industrial Welfare Commission, California Business
21 & Professions Code § 17200 et seq., the California Labor Code Private Attorneys General Act of
22 2004, Labor Code § 2699, et seq., the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., and
23 the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001 et seq. (“Released
24 Claims”).

I understand that the capitalized terms above are defined as follows:

- DHL means DHL Express (USA) Inc.
- Covered Period means the period from August 6, 2004 through[date of preliminary approval].
- Unknown Claims includes any claims about which I am not aware of and which, if I later learn of, I will not be able to obtain any remedy. In this regard, I waive California Civil Code Section 1542, which provides:
A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

66. Class Members who do not timely and validly exclude themselves from the Settlement and who do not timely and validly file a Claim Form shall be deemed as of the date of the Final Approval Order to have released the same Released Claims as those who timely and validly do file Claim Forms as set out in Paragraph 65 of this Agreement.

B. Released Claims by the Class Representative

67. As of the date the Final Approval Order is entered by the Court and except as to such rights or claims as may be created by this Settlement, to the maximum extent allowed by law, the Class Representatives will be deemed to have released claims as follows:

The Class Representatives hereby fully and finally release and discharges the Released Parties (defined in Paragraph 65, above) from any and all of the Released Claims (defined in Paragraph 65, above) and from any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that the Class Representatives have, now have, or may hereafter claim to have against the Released Parties arising out of, or relating in any way to, the Class Representatives’ hiring by, employment with, separation of employment with, or otherwise relating to the Released Parties (“Class Representatives’ Released Claims”), arising or accruing from the beginning of time up through the date of the Final Approval Hearing (“Class Representatives’ Released Period”). The Class Representatives’ Released Claims include, but are not limited to, claims arising from or dependent

on the California Labor Code, the Wage Orders of the California Industrial Welfare Commission, California Business and Professions Code Section 17200, *et seq.*, California Labor Code Private Attorneys General Act of 2004, Labor Code § 2699, *et seq.*, the California Fair Employment and Housing Act, Cal. Gov't Code Section 12900 *et seq.*, the California common law of contract and tort, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, 42 U.S.C. Section 12101 *et seq.*, the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001 *et seq.*, the Fair Labor Standards Act, 29 U.S.C. Section 201 *et seq.* and the Portal to Portal Act, 29 U.S.C. Section 251, *et seq.* The Class Representatives shall also sign and deliver to counsel for DHL a General Release in a form mutually agreed upon by the parties on or before the fifth calendar day following the Final Approval Hearing.

XI. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

68. The Parties shall submit this Joint Stipulation to the Court in support of Plaintiffs' Motion for Preliminary Approval and determination by the Court as to its fairness, adequacy, and reasonableness. As soon as reasonably possible upon execution of this Joint Stipulation, the Parties shall apply to the Court for the entry of an Order Granting Preliminary Approval of the Settlement and Notice which shall provide for, among other things, the following:

a. Scheduling a final fairness and approval hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable and adequate as to the Settlement Class and providing that such final fairness and approval hearing be scheduled for a date that is no earlier than the date required to ensure compliance with the Class Action Fairness Act;

b. Approving as to form and content the proposed Notice described herein;

c. Approving as to form and content the proposed Claim Form and Exclusion Form described herein;

d. Directing the mailing of the Notices, Claim Forms, and Exclusion Forms by first class mail to the Class Members;

- e. Preliminarily approving the Settlement;
- f. Preliminary certifying the Class for settlement purposes only; and
- g. Approving Morris and Associates and United Employees Law Group, PC as Class Counsel, Richard Hom and Justin Kelley as Class Representatives, and Gilardi & Co. LLC, or an administrator mutually agreed to by the Parties, as Claims Administrator.

XII. DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

69. Following final approval by the Court of the Settlement, the Parties will submit a Joint Proposed Order Granting Final Approval of the Class Action Settlement and Dismissing Action With Prejudice which shall provide, among other things, as follows:

- a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
 - b. Approving Class Counsel's application for an award of attorneys' fees and reimbursement of costs;
 - c. Approving the Class Representatives' service payments;
 - d. Certifying the Settlement Class for purposes of this Settlement only;
- and
- e. Dismissing this Action on the merits and with prejudice, permanently barring the Class Members who do not timely and validly exclude themselves from the Settlement from prosecuting any and all Released Claims against the Released Parties, and permanently barring the Class Representatives from prosecuting any and all Class Representatives' Released Claims against the Released Parties.

70. If the Parties cannot agree upon the content of a Joint Proposed Order, they shall submit competing Proposed Orders to the Court for consideration during the final approval hearing.

XIII. EFFECT OF NON-APPROVAL

71. If this Agreement is not preliminarily or finally approved by the Court and/or if a Final Approval Order is not entered dismissing the Action with prejudice or if DHL exercises the option to revoke pursuant to Paragraphs 34(e) or 58, above (*e.g.*, because the Court does not approve

60% minimum pay-out, or, the opt-outs from the Class exceed 7%), this Agreement shall be null and void. In such event, (1) nothing in this Agreement shall be construed as a determination, admission, or concession of any issue in the Action, and nothing in this Joint Stipulation may be offered into evidence in any trial on the merits of the claims asserted in the Complaint filed in the Action or in any subsequent pleading; (2) the Parties expressly reserve their rights with respect to the prosecution and defense of the Action as if this Agreement never existed; and (3) DHL shall be responsible for any costs for Notice or claims administration incurred by the Claims Administrator through that date; *provided* that such costs shall be recoverable in the event that DHL is the prevailing party in the Action. If there is any reduction in the attorneys' fees or costs awards or the Class Representative Payment, such reduction may be appealed but is not a basis for rendering this Agreement void, voidable and/or unenforceable.

XIV. NO SETTLEMENT FUND

72. The Parties agree that because no settlement fund has been or will be created by this Agreement (as set forth in Paragraph 15), California Code of Civil Procedure Section 384 and the doctrines of *Cy Pres* and *escheat* are not applicable to the Agreement or the settlement contemplated by this Agreement. As no obligation to pay Participating Class Members is created until a valid Claim Form is timely filed, there is no residue. Neither Plaintiffs nor their counsel shall take, or cause any other person to take, a position before any court, including the Court, that California Code of Civil Procedure Section 384 and/or the doctrines of *Cy Pres* and *escheat* apply to this Settlement.

XV. CONFIDENTIALITY PRECEDING MOTION FOR PRELIMINARY APPROVAL

73. Except for disclosures authorized by DHL or necessary to prepare the motion for preliminary approval, the terms of this Settlement shall remain confidential until they are presented to the District Court in connection with the motion for preliminary approval.

XVI. MUTUAL FULL COOPERATION

74. The Parties will fully cooperate with each other and use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary or ordered by the Court, or otherwise, to accomplish the terms of this Settlement,

including but not limited to, executing such documents and taking such other action as may reasonably be necessary to obtain preliminary and final approval of this Settlement and to implement its terms.

XVII. AMENDED COMPLAINT

75. Plaintiffs shall file an Amended Complaint within fifteen (15) days of the Court's entry of an Order of Preliminary Approval granting leave to file the Amended Complaint. The Complaint is amended to add claims under the California Private Attorney General Act, California Labor Code Section 2698, *et. seq.*

76. The allegations in the Amended Complaint are deemed controverted by the Answer previously filed by DHL in response to the Complaint, and no further responsive pleading is required.

XVIII. NO PRIOR ASSIGNMENTS

77. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any claims, causes of action, demands, rights and liabilities of every nature and description released under this Settlement.

XIX. NOTICES

78. Unless otherwise specifically provided by this Settlement, all notices, demands or other communications given under this Settlement will be in writing and be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return-receipt requested, addressed as follows:

To Plaintiffs and the Settlement Class:

STEPHEN B. MORRIS
Morris and Associates
444 West C Street, Suite 300
San Diego, CA 92101
Telephone: (619) 239-1300

To DHL:

R. BRIAN DIXON
LITTLER MENDELSON
650 California Street, 20th Floor
San Francisco, CA 94108
Telephone: (415) 433-1940

XX. CONSTRUCTION

79. This Settlement is the result of lengthy, arms-length negotiations between the Parties. This Settlement will not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement.

XXI. CAPTIONS AND INTERPRETATIONS

80. Paragraph and section titles, headings, or captions contained in this Settlement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any of its provisions. Each term of this Settlement is contractual and not merely a recital, except for those set forth in Section II, above.

XXII. MODIFICATION

81. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

XXIII. APPLICABLE LAW

82. All terms and conditions of this Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law or choice of law principles.

XXIV. INTEGRATION CLAUSE

83. This Settlement constitutes the entire agreement between the Parties relating to the Settlement and transactions contemplated by the Settlement. All prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or a Party's counsel, are merged into this Settlement. No rights under this Settlement may be waived except in writing.

XXV. BINDING ON ASSIGNS

84. This Settlement will be binding upon and will inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

XXVI. CLASS MEMBER SIGNATORIES

85. It is agreed that because the members of the Class are so numerous, it is

1 impossible or impractical to have each Class Member who does not timely and validly opt-out
2 execute this Settlement. The Class Notice will inform all Class Members of the binding nature of
3 the release contained herein will have the same force and effect as if this Settlement were executed
4 by each Class Member who does not timely and validly opt-out.

5 **XXVII. COUNTERPARTS**

6 86. This Settlement may be executed in counterparts, and when each Party has
7 signed and delivered at least one such counterpart, each counterpart will be deemed an original, and,
8 when taken together with other signed counterparts, will constitute one Settlement, which will be
9 binding upon and effective as to all Parties.

10 87. This Settlement may be signed by facsimile signature or digital signature,
11 each of which will have the same force and effect as an original signature.

12 **XXVIII. PARTIES' AUTHORITY TO SIGN**

13 88. The signatories to this Settlement hereby represent that they are fully
14 authorized to enter into this Settlement on behalf of themselves or their respective principals.
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EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this document to evidence their acceptance of and agreement to the Settlement.

Dated: _____, 2009

RICHARD HOM
Plaintiff

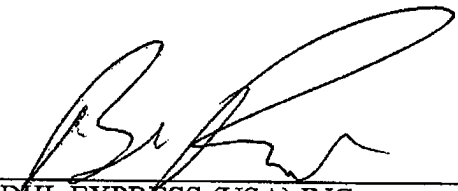
Dated: _____, 2009

JUSTIN KELLEY
Plaintiff

Dated: _____, 2009

STEPHEN B. MORRIS
MORRIS AND ASSOCIATES
Attorneys for Plaintiffs


Dated: November 16, 2009



DHL EXPRESS (USA) INC.
Defendant

By: Bradley Paskianich, Sr. Legal Counsel

Dated: November 16, 2009



R. BRIAN DIXON LAURA E. HAYWARD
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
DHL EXPRESS (USA) INC.

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EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this document to evidence their acceptance of and agreement to the Settlement.


Dated: 11/13/09, 2009


RICHARD HOM
Plaintiff

Dated: _____, 2009

JUSTIN KELLEY
Plaintiff

Dated: 11/10/09, 2009


STEPHEN B. MORRIS
MORRIS AND ASSOCIATES
Attorneys for Plaintiffs

Dated: _____, 2009

DHL EXPRESS (USA) INC.
Defendant
By: _____

Dated: _____, 2009

R. BRIAN DIXON
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
DHL EXPRESS (USA) INC.

Firmwide:92569440.1 047975.1038

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this document to evidence their acceptance of and agreement to the Settlement.

Dated: _____, 2009

RICHARD HOM
Plaintiff

Dated: November 11, 2009

Justin Kelley
JUSTIN KELLEY
Plaintiff

Dated: 11/10/09, 2009

Stephen Morris
STEPHEN B. MORRIS
MORRIS AND ASSOCIATES
Attorneys for Plaintiffs

Dated: _____, 2009

DHL EXPRESS (USA) INC.
Defendant
By: _____

Dated: _____, 2009

R. BRIAN DIXON
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
DHL EXPRESS (USA) INC.

Firmwide:92669440.1 047975.1038